


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/ STC/15-19/OA/2021.

DIN-20220764WT000000A091

आदेश की तारीख / Date of Order : 04.07.2022

जारी करने की तारीख / Date of Issue : 05.07.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 8 /2022-23

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)



ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-

/2022-23

M/s Navkar Engineers and Construction Co. situated at B-309, Shivalik Yash Building, Ankur Cross Road, 132 Feet Road, Naranpura, Ahmedabad-380 013 were issued SCN F. No. STC/15-19/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North.

BRIEF FACT OF THE CASE PERTAINING TO ISSUANCE OF THE SUBJECT SCN ARE AS UNDER:

M/s. Navkar Engineers and Construction Co. situated at B-309, Shivalik Yash Building, Ankur Cross Road, 132 Feet Road, Naranpura, Ahmedabad-380013 (hereinafter referred to as 'Assessee') engaged in providing taxable services, are holding Service Tax Registration No. AAIFNO798ASD001.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" of Navkar Engineers and Construction Co., was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 & 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes & Customs (CBIC).

3. On going through the Third Party Data provided by CBDT of the said assessee for the F.Y. 2015-16 & 2016-17, the total sales of service from ITR/26AS were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Returns of the F.Y. 2015-16 & 2016-17. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 & 2016-17 as compared to the Service related taxable value declared in their Income Tax Returns (ITR)/Form 26AS for the F.Y. 2015-16 & 2016-17. The difference in value as observed for FY 2015-16 & 2016-17 was as under:

Sr.No.	F.Y	Taxable value as per ST3 returns (in Rs.)	Gross Receipts from services(Value from ITR/26AS) (in Rs.)	Difference between value of services from ITR/26AS and Gross Value in Service Tax Provided (In Rs.)	Resultant Service Tax Short Paid (in Rs.)
1	2015-16	0/-	15,12,46,506/-	15,12,46,506/-	2,19,30,743/-
2	2016-17	0/-	2,38,97,163/-	2,38,97,163/-	35,84,574/-
TOTAL					2,55,15,317/-

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs.2,55,15,317/- on the differential value of Rs.17,51,43,669/-.



As per Section 68 of the Finance Act, 1994 'every person' liable to Service Tax, shall pay Service Tax at the rate specified in Section 66/66B in such manner and within such period which is prescribed under Rule 6

of the Service Tax Rules, 1994. In the instant case, it appeared that the assessee had not paid service tax for Financial Year 2015-16 and 2016-17.

5. As per Section 70 of the Finance Act 1994, 'every person' liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 returns). It appeared that the assessee had not assessed the tax dues properly on the services provided/received, and had failed to file correct ST-3 Returns under provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

6. As per Section 75 *ibid*, every person liable to pay the Service Tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the Service Tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. It appeared that the assessee had failed to pay their Service Tax liabilities in the prescribed time limit therefore they had made themselves liable for payment of the said amount along with interest. The said Service Tax was required to be demanded and recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

7. It appeared that the Assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they had failed to pay/ short paid/ deposit Service Tax to the extent of Rs.2,55,15,317/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they had failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

8. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services

provided by them or intimated to the Department regarding receipt/providing Services of the differential value which had come to the notice of the Department only after going through the Third Party CBDT data generated for



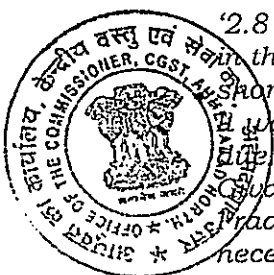
the Financial Year 2015-16 & 2016-17. From the evidences gathered/available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as could be seen in the table above and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 2,55,15,317/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which was in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government. It appeared that the above act of omission on the part of the Assessee which resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 were done with an intent to evade payment of Service tax to the extent mentioned hereinabove. The same appeared to be recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. The above act of omission on the part of the Assessee constituted an offence of the nature as specified under Section 78 of the Finance Act, 1994 and it appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

9. No data was shared by the CBDT with CBIC, for the period 2017-18 (upto Junc-2017) and the assessee also had failed to provide any information regarding rendering of taxable service for this period, therefore, at the time of issuance of SCN it was not possible to quantify the short payment of Service Tax, if any, for the period 2017-18 (upto Junc-2017).

Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that:

'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Superior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be



a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

10. The provisions of the repealed Central Excise Act, 1944, the Central Excise Tariff Act, 1985 and amendment of the Finance Act, 1994 have been saved vide Section 174 (2) of the CGST Act, 2017, and therefore the provisions of the said repealed/amended Acts and Rules made there under were sought to be enforced for the purpose of demand of duty, interest, etc. and imposition of penalty under the Show Cause Notice issued to the assessee.

11. As per Board's Instruction No 1080/09/DLA/MISC/15 dated 21.12.2015 and Instruction No 1080/11/DLA/CC Conference/2016 dated 8.7.2016, pre-SCN consultation with the adjudicating authority had been made mandatory before issuance of a show cause notice involving an amount of over Rs 50 lacs. Accordingly, a communication was made to the assessee fixing the date for pre-SCN consultation on 23.04.2021 by the SCN issuing authority. However, nobody turned up for pre-SCN consultation hearing before issuance of SCN by the competent authority.

12. Accordingly, Show Cause Notice No.STC/15-19/OA/2021 dated 23.04.2021 was issued by the Commissioner, Central GST & Central Excise, Ahmedabad North to M/s.Navkar Engineers and Construction Co., Ahmedabad-380013 asking them as to why:

- (i) The demand for Service tax to the extent of Rs. 2,55,15,317/- short paid /not paid by them in F.Y.2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty under Section 77(2) of the Finance Act,1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failure to file correct Service Tax Returns, as required under Section 70 of the Finance Act,1994 read with Rule 7 of the Service Tax Rules,1994.

13. DEFENCE REPLY:

The assessee did not file any defence reply in response to the SCN issued to them on the subject demand.

14. PERSONAL HEARING:

Personal Hearing was granted to the assessee on 17.05.2022, which was attended by Shri Jayeshbhai Bavishi, Proprietor and Shri Ritesh Barot, Accountant of M/s. Navkar Engineers & Construction Co. The assessee tendered their written submission dated 17.05.2022 during the course of personal hearing. They submitted that they are doing public related government work. They submitted that they were government contractor and

they were doing work related to water sump and pipe line for water supply. They also submitted the copy of RA bills, 26AS and sales account ledger. They submitted that since they were government contractor, therefore they were exempted from payment of Service Tax.

15. DISCUSSION & FINDINGS:

15.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defense reply dated 17.05.2022 and documents submitted by the assessee.

15.2 On going through the Show Cause Notice, I find that data of Sales /Gross receipt from services as per ITR were shared by the CBDT with CBIC for F.Y. 2015-16 & 2016-17, which was then compared with the gross value declared in ST-3 Returns filed for FY 2015-16 & 2016-17 by the assessee. The difference in value of service to the extent of Rs.17,51,43,669/- was noticed and therefore, in view of the differential values the subject SCN for recovery of Service Tax to the tune of Rs.2,55,15,317/- was issued. Apart from the aforementioned difference noticed, no other documentary evidence was adduced by the department to substantiate the allegations. Accordingly, I find that the issue which requires determination as of now is whether the assessee was liable to pay service tax on the differential value of Rs. 17,51,43,669/- under proviso to section 73(1) of Finance Act, 1944 or not.

16 Thus, first and foremost, to understand the liability or otherwise of the assessee for paying Service Tax, I feel that it is absolutely necessary to understand the activities being carried out by the assessee. I observe that after introduction of new system of taxation of services in negative list regime, any service for a consideration is taxable except those services specified in the negative or exempt list by virtue of mega exemption.

16.1 I discern that the assessee in their defence reply dated 17.05.2022 has stated that they have rendered services of works contract service awarded by the Government for water supply e.g. pipe line, water tank, sump etc., and

are not liable to pay service tax on the said services provided by them.

They submitted the copy of RA bills, Copy of sales account ledger, copy of 26AS. The assessee have also submitted the audited balance sheet for F.Y.2015-16 & 2016-17.



16.2 I find that the Notification No. 25/2012-ST dated 20.06.2012 issued under Section 93(1) of the Finance Act,1994 grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the assessee has contested the demand of Service Tax on services rendered by them arguing that the service provided by them were Works Contract Services for the Government thereby the same were exempted from levy of Service Tax. The assessee has accordingly claimed the exemption from levy of service tax.

17. I find from the data shared by the CBDT that the assessee were paid/credited the amount of Rs. 15,12,46,506/- and Rs. 2,38,97,163/- during FY 2015-16 and 2016-17 respectively, as disclosed by the tax deductor under section 194C and 194J of the Income Tax Act. I find that Section 194C of the Income Tax Act deals with the tax deduction at source (TDS) that is to be compulsorily deducted from any payments that have been made to any person who is a resident contractor or a subcontractor. Therefore, any amount paid/credited on which TDS has been deducted under Section 194C is contract income. I also find that Section 194J of the Income Tax deals with the fees for professional or technical services at source from the amount credited or paid by way of fee for professional services. Hence, I am of opinion that the assessee had done contract work, received payment under the Works Contract Service under Section 194C of the Income Tax Act,1961 and fees for professional or technical services under Section 194J of the Income Tax Act,1961. I find that in form 26AS, TDS had been deducted under Section 194C and 194J of the Income Tax Act. Section 194C & 194 J of the Income Tax Act,1961 are herein reproduce below:

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to---

- (i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;
- (ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family, of such sum as income-tax on income comprised therein.

194J. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of---

- (a) fees for professional services, or
- (b) fees for technical services, or
- (c) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or
- (d) royalty, or

(d) any sum referred to in clause (va) of section 28,

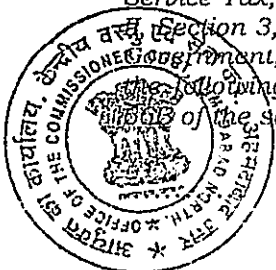
17.1 Therefore, any amount paid/credited on which TDS has been deducted under Section 194C & 194J, the amount paid/credited is a contract income under Section 194C and fees for professional or technical service income under 194J of the Income Tax Act, 1961. I find that the assessee has admittedly stated in their written submission dated 17.05.2021 that they had provided the service of water tank, sump, pipeline etc., to government; therefore, there is no dispute vis-a-vis the provision of service by the assessee.

18. I find that the SCN mentions of the sharing of data from ITR/Form 26AS, however, on going through the data shared by the CBDT, it is seen the value of service is taken from the amount paid/ credited to the assessee as disclosed by the tax deductor (service recipients) under Section 194C & 194J of the Income Tax Act, and the said amounts are found tallying with Form 26AS for FY 2015-16 and 2016-17. Hence, I proceed with these data sets for deciding the matter.

19. I find that the Notification No. 25/2012-ST dated 20.06.2012 issued under Section 93(1) of the Act, grants exemption to the taxable services enlisted therein from whole of Service Tax leviable under section 66B of the Act. I find that the assessee has contested the demand of Service Tax on services rendered by them the same being service provided under the Works Contract Services for the Government and sub contractor. The assessee has claimed the exemption from levy of service tax under Sr. No.12 & 29(h) of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. Since the assessee has claimed the exemption from service tax under Notification 25/2012-ST dated 20.06.2012, the relevant extracts of the said notification are reproduced as under for ready reference.

Notification No. 25/2012-Service Tax dated 20th June, 2012

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely":-



" 12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) ***

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) ***

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) ***"

"13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;"

"29. Services by the following persons in respective capacities –

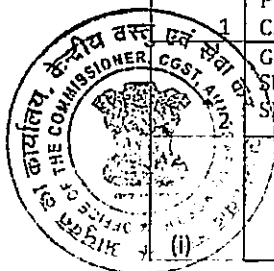
(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;"

Therefore, it is evident that the exemption from the payment of service tax under this notification is available to the assessee only for services provided by way of construction, repair, maintenance, renovation or alteration of a canal, water supply and Road for public use under Notification No.25/2012-ST dated 20.06.2012, Sr.No.12 (e) & 13 (a) and sub-contract work under Notification No.25/2012-ST dated 20.06.2012, Sr.No.29(h).

20. In order to ascertain the availability of the exemption from payment of service tax under Notification No. 25/2012- ST or otherwise to the services rendered by the assessee, I would like to examine the documents submitted by the assessee alongwith their written submission dated 31.05.2021. On going through the Form 26AS, and department bill (RA bills), the following facts are emerging as under:

TABLE-I. [F.Y.2015-16 (AS PER FORM 26AS)]

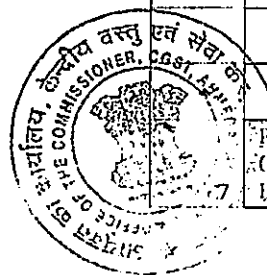
Name of TDS deductor	Amount paid/credited (total Rs.)	Break up of amount paid credited (Rs.)	TDS deducted	Description of the work done by the assessee as per RA bill produced by the assessee	Benefit of exemption notification
GUJARAT WATER SUPPLY & SEWAGE BOARD PUBLIC HEALTH CIRCLE	661537		13231	PROVIDING, LAYING, LOWERING & COMMISSIONING PIPELINE	25/2012, Sr.No.12(e)
GUJARAT WATER SUPPLY & SEWAGE BOARD	110282914		2151493		
		6103155		PROVIDING, LAYING, LOWERING & COMMISSIONING PIPELINE	25/2012, Sr.No.12(e)



(ii)		4122307	PROVIDING , LAYING, LOWERING & COMMISSIONING PIPELINE FROM U/G SUMP	-DO-
(iii)		2798565	PROVIDING , LAYING, LOWERING & COMMISSIONING PIPELINE FROM U/G SUMP	-DO-
(iv)		2134584	PROVIDING , LAYING, LOWERING & COMMISSIONING PIPELINE FROM U/G SUMP	-DO-
(v)		3364761	PROVIDING , LAYING, LOWERING & COMMISSIONING PIPELINE FROM U/G SUMP	-DO-
(vi)		1941769	PROVIDING , LAYING, LOWERING & COMMISSIONING PIPELINE FROM U/G SUMP	-DO-
(vii)		2861045	PROVIDING , LAYING, LOWERING & COMMISSIONING PIPELINE FROM U/G SUMP	-DO-
(viii)		18953	LI & joint pvc conne. Pipeline for supu rwss of dhanera taluka	25/2012, Sr.No.12(e)
(ix)		2661616	PROVIDING , LAYING, LOWERING & COMMISSIONING PIPELINE FROM U/G SUMP	25/2012, Sr.No.12(e)
(x)		135967	NO DOCUMENT	No exemption
(xi)		7003757	PROVIDING , LAYING, LOWERING & COMMISSIONING PIPELINE	25/2012, Sr.No.12(e)
(xii)		41280	DEVELOPMENT OF GARDEN	No exemption
(xiii)		4011650	PROVIDING , LAYING, LOWERING & COMMISSIONING PIPELINE	25/2012, Sr.No.12(e)
(xiv)		4753601	NO DOCUMENT	No exemption
(xv)		5213085	PIPE LINE FOR VARIOUS SECTIO NOF SIPU,	25/2012, Sr.No.12(e)
(xvi)		17668070	CONSTRUCTION OF DIFFERENT CAPACITY OF GLRCC CISTEN & PROVIDING LOWERING LAYING & JOINTING IDFF DIA OF HDPE PIPE LINE	-DO-
		7672038	PROVIDING LOWERING LAYING & JOINTING DIFF DIA OF HDPE PIPE LINE FROM EXISTING U/G SUMP	-DO-



(xviii)			24249514		PROVIDING LOWERING LAYING & JOINTING OF HDPE PIPE LINE FROM EXISTING U/G SUMP	-DO-
(xix)			4588744		PROVIDING LOWRING LAYING & JOINTING DIFF IDA OF HDPE PIPE LINE FROM EXISTING U/G SUMP BASES OF SAMALA VADANA OFF TAKE POINT.	-DO-
(xx)			113834		No document	No exemption
(xxi)			7604574		PROVIDING, LAYING, LOWERING & COMMISSIONING PIPELINE	25/2012, Sr.No.12(e)
(xxii)			126256		NO DOCUMENT	No exemption
(xxiii)			846436		NO DOCUMENT	No exemption
(xxiv)			247353		NO DOCUMENT	No exemption
3	GUJARAT WATER INFRASTRUCTURE LTD	417368		8356		
			51237		NO DOCUMENT	No exemption
			180112		NO DOCUMENT	No exemption
			51980		NO DOCUMENT	No exemption
			51441		NO DOCUMENT	No exemption
			28378		NO DOCUMENT	No exemption
			54310		NO DOCUMENT	No exemption
4	GUJARAT LIVE STOCK DEVELOPMENT BOARD	2629536		52591		
			1578444		DEVELOPMENT OF BULL MOTHER FARM	NO EXEMPTION
			1051092		DEVELOPMENT OF BULL MOTHER FARM	NO EXEMPTION
5	PUBLIC HEALTH WORKS DIVISION	8062389		161248		
			3843862		CONSTRUCTION OF PUMP HOUSE	25/2012, Sr.No.12(e)
			4218527		CONSTRUCTION OF PUMP HOUSE	25/2012, Sr.No.12(e)
6	PRAKASHKKUMAR CHUNILAL PATEL	9199270		183985		
			1239486		NO DOCUMENT	No exemption
			600000		NO DOCUMENT	No exemption
			500000		NO DOCUMENT	No exemption
			3424916		NO DOCUMENT	No exemption
			3434868		NO DOCUMENT	No exemption
	PUBLIC HEALTH CIRCLE HIMATNAGAR	9447441		188951		



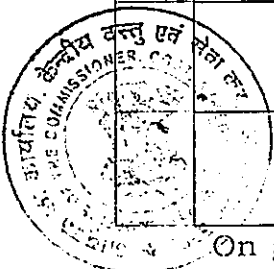
(i)			5919717		PROVIDING , LAYING, LOWERING & COMMISSIONING PIPELINE FOR SK- 1 DIST S.K.	25/2012, Sr.No.12(e)
(ii)			1049355		NO DETAIL OF WORKS IN RA BILL/WORK ORDER NOT PROVIDED	No exemption
(iii)			1519800		CONSTRUCTION OF ROAD	25/2012 Sr.No.13(a)
(iv)			958569		CONSTRUCTION OF ROAD	25/2012 Sr.No.13(a)
8	GKC PROJECTS LIMITED	10546051		210921		
			3474932		Work order issued to main contractor not provided	No exemption
			7071119		-do-	No exemption

TABLE-II [F.Y.2016-17 (AS PER FORM 26AS)]

	Name of TDS deductor	Amount paid/credited (total Rs.)	Break up of amount paid credited (Rs.)	TDS deducted	Description of the work done by the assessee as per RA bill produced by the assessee	Benefit of exemption notificatio n
1	GUJARAT WATER SUPPLY & SEWERAGE BOARD	1951758		39100		
			126196		NO DOCUMENT	No exemption
			796869		NO DOCUMENT	No exemption
			964459		NO DOCUMENT	No exemption
			64234		NO DOCUMENT	No exemption
2	GUJARAT WATER INFRASTRUCTURE LTD	542035		10844		
			41900		NO DOCUMENT	No exemption
			45284		NO DOCUMENT	No exemption
			41215		NO DOCUMENT	No exemption
			45284		NO DOCUMENT	No exemption
			36495		NO DOCUMENT	No exemption
			102215		NO DOCUMENT	No exemption
			100865		NO DOCUMENT	No exemption
			28145		NO DOCUMENT	No exemption
			47133		NO DOCUMENT	No exemption
			53498		NO DOCUMENT	No exemption
3	GUJARAT LIVESTOCK DEVELOPMENT BOARD	337036		6741	DEVELOPMENT OF LIVE BULL MOTHER FARM (NO WORK ORDER/TENDER)	No exemption



4	MARS PLANNING AND ENGINEERING	417390		41739	evaluation report of GWSSB for onstruction of Balanceing Storage Reservoirs.	No exemption
5	SENIOR DIVISIONAL FINANCIAL MANAGER	1421021		28420	NO document	No exemption
6	PUBLIC HEALH WORKS DIVISION (GWSSB)	2987313		59746		
			1000		PROVINDING, SUPPLYING, LOWERING, LAYING AND JOINTING PIPE LINE & CONSTRUCTION OF UG SUMP.	25/2012, Sr.No.12(e)
			948631		PROVINDING, SUPPLYING, LOWERING, LAYING AND JOINTING PIPE LINE & CONSTRUCTION OF UG SUMP.	25/2012, Sr.No.12(e)
			1150560		PROVINDING, SUPPLYING, LOWERING, LAYING AND JOINTING PIPE LINE & CONSTRUCTION OF RCC CATTLE.	25/2012, Sr.No.12(e)
			887122		PROVINDING, SUPPLYING, LOWERING, LAYING AND JOINTING PIPE LINE & CONSTRUCTION OF UG SUMP.	25/2012, Sr.No.12(e)
7	SANAND NAGAR PALIKA	1494840		24897		
			500000		construction of sump	25/2012, Sr.No.12(e)
			994840		Construction of sump	25/2012, Sr.No.12(e)
8	SR DFMS OFFICE (WESTERN RAILWAY)	7795938		155919		
			773288		CONSTRUCTION OF RCC WATER TANK, sump and pipe line etc., for improvement of watering arrangements	25/2012, Sr.No.12(e)
			2287785		-do-	25/2012, Sr.No.12(e)
			1808411		-do-	25/2012, Sr.No.12(e)
			1366330		-do-	25/2012, Sr.No.12(e)
			1560124		-do-	25/2012, Sr.No.12(e)
9	GKC PROJECTS LIMITED	6949832		138997		
			3474900		WORK ORDER ISSUED TO MAIN CONTRACTOR NOT PROVIDED	No exemption
			3474932		WORK ORDER ISSUED TO MAIN CONTRACTOR NOT PROVIDED	No exemption



On going through the Form-26AS submitted by the assessee, it is seen that the assessee has received payment from the tax deducter under Section

194C i.e. payment to contractors and sub-contractors under Income Tax Act,1961, that the assessee had provided the works contract services and amount received from tax deducter under Section 194C and under Section 194J i.e. Fess for professional or technical services has been considered as taxable service for issuance of SCN. The details are as given below;

F.Y.	Taxable value as per ST-3 returns (in Rs.)	Gross Receipts from services (Value from ITR/26AS) (in Rs.) as per SCN	Gross Receipts from services as per 26AS submitted by the assessee under Section 194C & 194J (in Rs.)	Difference.(in Rs.)
2015-16	0/-	15,12,46,506/-	15,12,45,506/-	0/-
2016-17	0/-	2,38,97,163/-	2,38,97,163/-	0/-

On going through the above table, I find that in the subject SCN demand has been raised on Gross Receipt from Services (Value from ITR/26AS) considered as Rs.15,12,46,506/- for F.Y.2015-16 and Rs. 2,38,97,163/- for F.Y. 2016-17, the same is tallied with the Form 26AS submitted by the assessee.

21. I find that the assessee vide letter dated 17.05.2022 has stated that they are submitting copy of RA bills, 26AS & Sales Account ledger. However, on scrutiny of the details/documents submitted by the assessee, I find that the assessee has not provided all the RA bills in support of their claim. I find that the assessee has claimed that they have provided works contract service to the Government and therefore they are exempted from levy of service tax. I find that RA Bill clearly describe that the work carried out by the assessee was of "works contract service" and the same was awarded by various department/undertaking of Government. Further, at Sr.No.10 of Form NO.3CD, Part-A, of Tax Audit Report issued u/s 44AB of the Income Tax Act,1961, the nature of business or profession of assessee is mentioned as construction contractor. It is accordingly established from the above that the assessee was indeed engaged in providing services of works contract.

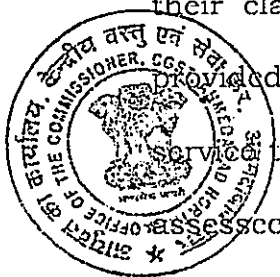
21.1 Keeping in view the aforementioned detailed discussions, I find that the works contract service provided by the assessee were squarely covered under the Sr. No. 12(e) of the Notification No. 25/2012-ST dated 20.06.2012 & Sub-Contract work under Sr. No. 29(h) of the Notification No. 25/2012-ST

dated 20.06.2012, I find that the exemption is quite clearly available to the assessee for "pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal" as claimed by them. I am convinced with the arguments put forth by the assessee and they are held not liable for payment of service tax on those services provided by them under Notification NO.25/2012-ST dated 20.06.2012.

21.2 However, I find that assessee has not provided any supporting required/relevant documents for the work/service provided by them mentioned at Sr.No.2(x), 2(xiv), 2(xx), 2(xxii), 2(xiii), 2(xiv), 3, 6, 7(ii), 8 of Table-I and Sr.No.1,2, & 5 of Table-II of para 20. Hence, I am unable to draw any conclusion with regard to nature of service as to whether the same is exempted or otherwise? In the absence of documentary and tangible support, I am unable to agree with the assessee claim for exemption and I am left with no option but to hold that, the assessee is not eligible for exemption under Notification No.25/2012-ST dated 20.06.2012 as claimed by them. Accordingly, I am constrained to hold that the assessee is not eligible to avail benefit of exemption Notification NO.25/2012-ST dated 20.06.2012 vis-a-vis the abovementioned work/service provided by them.

21.3 I also find that assessee has provided service for development of garden for F.Y.2015-16 to M/s. Gujarat Water Supply & Sewerage Board, however, the said service is not covered under Exemption Notification NO.25/2012 as has been wrongly claimed by the assessee.

21.4 I find that the assessee has provided works contract service to M/s. Gujarat Live Stock Development Board for development of bull mother farm and GKC Projects Limited for F.Y.2015-16 & 2016-17. However, I find that assessee has not submitted any details/contract/agreement in support of their claim, they have blandly stated in their defence reply that they had provided service to the Government and therefore they are exempt from levy of service tax. In the absence of documentary tangible evidence in support of the assessee's contention, I am left with no recourse, but to disagree with the



assertion of the assessee. Hence, I am of the considered opinion that the assessee is not entitled for exemption under Notification NO.25/2012-ST dated 20.06.2012 as claimed by them vis-a-vis the service provided.

21.5 I find that the assessee has provided service to M/s. Mars Planning and Engineering for evaluation report for GWSSB, however, I am of the view that the same is also not covered under Works Contract Service and therefore the same is not eligible for exemption under notification no.25/2012.

21.6 I find that the assessee has also provided works contract service for construction of RCC roads and streetlighting work at Kaniyol, Savagadh, Dedharota, Rajpur and Mordungara Headwork sites under SSW, SK-1 project, Ta Himatnagar, Dist. Sabarkantha and the same is squarely covered under Sr.No.13(a) of Notification No.25/2012-ST dated 20.06.2012. Accordingly, I hold that the assessee is clearly entitled for benefit of exemption notification no.25/2012 for the above mentioned services.

22. I find that except for the service provided as discussed in para 21.2,21.3,21.4 and 21.5, for the rest of services assessee is clearly entitled for benefit of availment of exemption notification no.25/2012-ST dated 20.06.2012.

23. I find that Gujarat Water Supply & Sewerage Board has been established by the Government of Gujarat through Notification No. GHNY-79/35/WSB-3079-5941-P dated 17.08.1979 and the same is directly under control of the state government and they undertake the functions as entrusted to them by the government. Therefore, Gujarat Water Supply & Sewerage Board is the governmental authority. Gujarat Water Infrastructure Limited (GWIL) is a registered company of Government of Gujarat, and is a governmental authority. The vision of the company is to establish bulk water Infrastructure projects across the state for drinking water and ensure equitable and efficient distribution of water for Regional Water Supply Schemes (RWSS) villages covered by GWSSB, Nagar Palikas, Corporations, and Industries.

Similarly, Sanand Nagar Palika is a local authority.

I rely on the decision of the tribunal in the case of in the case of M/s. Krishi Construction Pvt Ltd reported at 2020 (43) G.S.T.L. 236 (Tri. - Hyd.), wherein the tribunal has held the Government companies and

corporation to be governmental authority in para 12 of the decision, which is reproduced as under:

"12. Having considered the rival contentions on this issue, we find that admittedly all the companies/Corporations have been established by the Government of Andhra Pradesh under the various Acts and/or 'Government order', as aforementioned and thus we hold that the appellant has provided service to Governmental authority. Evidently all the service recipients have been set up by the State Government, and are directly under the control of the various Ministries of the State Government. Thus, the service recipients are covered under sub-clause (i) of clause (5), of the definition of the term 'Govt. Authority', in Notification No. 25/2012-S.T. as amended by Notification No. 2/2014-S.T. (by way of substitution). Accordingly, we hold that the appellant is entitled to exemption under Notification No. 25/2012-S.T., and the demand of Rs. 97,63,710/- is set aside."

24. Therefore, in view of this legal position, I find that the assessee was eligible for exemption from payment of service tax for the provision of service to the government, government authority and local authority by way of construction, repair, maintenance, renovation or alteration of a canal, water supply and road. Therefore, the service provided by the assessee to the Government and Governmental authority was exempt from levy of service tax.

25. In view of the discussion made in the forgoing paras, the service tax liability of the assessee has been determined as under;

		2015-16	2016-17
(a)	Gross Taxable value as per SCN	151246506	23897163
(b)	Less Exempted service under Notification NO.25/2012	121099916	12278091
(c)	Net Taxable value	30106307	11619072
(d)	Taxable value where no documents provided	16889440	3914814
(e)	S. Tax payable for no documents provided	2448969	587222
(f)	Taxable value of works contract service, but not exempted under notification no.25/2012	13216867	7286868
(g)	less abatement for works contract service of (f) above	7930120	4372121
(h)	Net taxable value for works contract service	5286747	2914747
(i)	S. Tax payable for (h) above	766578	437212
(j)	Taxable value of 194J, not exempted under 25/2012	0	417390
(k)	S.Tax payable for (j) above	0	62608.5
	TOTAL SERVICE TAX PAYABLE (e)+(i)+(k)	3221388	1087043
	TOTAL SERVICE TAX PAYABLE FOR F.Y.2015-16 & 2016-17		4302590

In view of the above discussion, I am of the considered view that the assessee are liable to pay service tax of Rs.43,02,590/- for F.Y.2015-16 & 2016-17. Accordingly, the Service Tax totally amounting to Rs. 43,02,590/- is



under Finance Act, 1994 is in utter disregard to the requirements of law and is a breach of trust reposed in them and is certainly not in tune with Government's efforts in the direction to create a voluntary tax compliance regime.

I rely upon the judgment in the case involving Aircel Digilink India Ltd. V/s. Commissioner of Central Excise, Jaipur, reported in 2006 (3) STR 386 (Tri.-Dcl) and the case involving Bharti Cellular Ltd. V/s Commissioner of Central Excise, Delhi, reported in 2006 (3) STR 423 (Tri.-Dcl). In both cases, the Hon'ble Tribunal upheld invocation of extended period after taking note of the fact that appellants had not disclosed certain details and mode of computation in their ST-3 details and there was nothing on record to suggest that appellants had ever approached the office of the service tax authorities to ascertain the details of their liability to pay the service tax. Similarly, in case of Insurance & Provident Fund Department V/s. Commissioner of Central Excise, Jaipur-I, reported in 2006 (2) STR 369 (Tri.-Dcl.), Hon'ble Tribunal held that non-disclosure of full amount of premium collected would attract invocation of extended period. The ratio of the above judgments is squarely applicable to the present case also as the assessee has not only suppressed the material facts from the department but has also failed to comply with law and procedures, including payment of service tax. In view of the above, I hold that in the facts and circumstances of the present case, proviso to section 73 (1) of finance act, 1994, is rightly invoked for raising the demand for service tax against the assessee.

27. Further, it is observed that the assessee was fully aware about the fact that they were receiving such income which was chargeable to Service Tax. However, in spite of being conscious of their liability; they chose not to pay and discharge the said applicable dues related to Service Tax. This was done to escape from the eyes of the department with intent to evade the payment of dues related to Service Tax under the Finance Act, 1994. This fact of non-payment of dues related to Service Tax would have remained unnoticed, if the third party data had not been received from the CBDT. These acts on the part of the assessee tantamounts to willful suppression, concealment and mis-statement of facts, with intent to evade the payment of dues related to Service



Since in the instant case, suppression of material facts have been established beyond doubt after discussions in the paras supra, I consider this

as a fit case for imposition of penalty under Section 78 of the Finance Act, 1994 which reads as under:

“SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —

(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

Provided further that where service tax and interest is paid within a period of thirty days of — the date of service of notice under the proviso to (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded; (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

Explanation. — For the purposes of this sub-section, “specified records” means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of accounts shall be considered as the specified records.”

28.1 Since, it is already proved that the assessee had suppressed the facts, the consequences shall automatically follow. Hon’ble Supreme Court has settled this issue in the case of U.O.I Vs. Dharmendra Textile Processors reported in 2008(231)ELT3(SC) and has further clarified the same in the case of I. Vs. RSWM reported in 2009(238)ELT3(SC). Hon’ble Supreme Court said that the presence of **malafide** intention is not relevant for imposing penalty and **mens rea** is not an essential ingredient for imposition of penalty for tax delinquency which is a civil obligation. Further, Hon’ble High Court of



Karnataka at Bangalore in the case of Motor World (2012(27)STR225(Kar.)) has held that;

“Section 78 applies to a case where a person has registered himself under the Act and failed to file the prescribed return and in such return filed, he has suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service.....

.....Therefore, the argument that once acts of suppression, concealment and furnishing inaccurate particulars are established, the penalty follows as a matter of course or in other words is automatic, is without any substance as it runs counter to the express provision contained in Sections 78 and 80 of the Act. When once it is held that there is no reasonable cause, then the authority is empowered to impose penalty as prescribed under Section 78, for such failure. Here the penalty prescribed is penalty which shall not be less than but which shall not exceed twice the amount or service tax sought to be evaded by reason of suppression or concealment or the value of taxable service or the furnishing of inaccurate value of such taxable service.

21. When once the ingredients of Section 78 are established and there is no reasonable cause for failure. Section 80 is not attracted. Then the authority has to impose a minimum penalty of the amount or service tax sought to be evaded and the maximum is double the said amount. Here, there is no discretion, which is vested with the authority. The discretion is only confined to impose a penalty above the minimum and less than the maximum provided for under the Act.....”

28.2 Thus penalty under Section 78, is attracted whenever any Service Tax has not been levied or not paid or has been short levied or short paid or erroneously refunded by the reasons of fraud, suppression of facts, willful misstatement or contravention of any provisions of Finance Act, 1994 or of the rules made there under with intent to evade the payment of service tax and this penalty shall not be less than the duty evaded. However, as per the second proviso to section 78, where such service tax along with interest is paid within 30 days from the date of communication of the order, penalty would be further reduced to 25% of the service tax so determined. The benefit of reduced penalty shall be available only if such penalty is also paid within 30 days from the date

of receipt of the order. Thus the assessee have rendered themselves liable to penalty under Section 78 of the Finance Act, 1994 as they were not paying service tax in spite of the facts that they were providing the taxable service.



29. Regarding penalty under Section 77, I find that the assessee has also contravened the provision of Section 67 of the Finance Act, 1994 in as much as they failed to determine the correct value of taxable services; violated the provisions of Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 by not paying the Service Tax during the F.Y. 2015-16 & 2016-17. Further, the assessee has not assessed the tax dues properly, on the services provided by them, as discussed above, and had failed to file correct ST3 returns in time thereby violating the provision of Section 70 of the act read with Rule 7 of the Service Tax Rules, 1994. In view of the above, they are liable for imposition of appropriate penalty under Section 77 of the Finance Act, 1994.

30. Accordingly, the Service Tax totally amounting to Rs. 43,02,590/- is recoverable from the assessee under the provisions of Section 73(1) of the Finance Act, 1994 and they have also rendered themselves liable to pay interest under section 75 of the Finance Act, 1994. They have further rendered themselves liable for penalty under the provisions of Section 78 of the Finance Act, 1994.

31. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

(i) I confirm the demand and order recovery of Service Tax of Rs.43,02,590/- (Rs. Forty Three Lakh Two Thousand Five Hundred Ninety Only) out of total demand of Rs. 25515317/- from the assessee under Section 73 of the Finance Act, 1994. I drop the demand of Rs. 21212727/-, as the same is found to be incorrect and unsustainable.

(ii) I order to recover interest at the applicable rate from the assessee under the provisions of Section 75 of the Finance Act, 1994 on the demand at (i) above.

(iii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon them under section 77(2) of the Finance Act, 1994.



(iv) I impose penalty of Rs. Rs. 43,02,590/- (Rs. Forty Three Lakh Two Thousand Five Hundred Ninety Only) under section 78 of the Finance Act, 1994. If the service tax amount is paid along with appropriate interest as applicable, within 30 days from the date of receipt of this order, then the amount of penalty under Section 78 shall be reduced to 25% of the Service Tax amount, provided if such penalty is also paid within such period of 30 days.

(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Hand Delivery

F. No. STC/15-19/OA/2021

Date: 04.07.2022

To,
Navkar Engineers & Construction Co.
B-309, Shivalik Yash Building,
Ankur Cross Road,
Naranpura,
Ahmedabad-380 013

Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2. The Assistant Commissioner, CGST & C. Ex., Division-VII, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Ahmedabad North.
4. The Superintendent (System), CGST, Ahmedabad North for uploading on website.
5. Guard File.

